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1           A.     No document or journal or  
2     deposition, no.

3           Q.     Any other information that's not a  
4     document, journal or deposition?

5           A.     Yes, my 40 years of human resources  
6     experience. My training, education and the  
7     certification tests I have taken for senior  
8     professional in human resources.

9           Q.     Did you rely on any communications  
10    with counsel in forming your opinion?

11          A.     Yes.

12          Q.     What communications did you rely  
13    on?

14          A.     They sent me an e-mail specifying  
15    the three questions they wanted me to ask  
16    that formed the basis of my forming my  
17    opinions.

18          Q.     That they wanted you to answer?

19          A.     That they wanted me to -- well,  
20    that they wanted me to ask and answer. Yes.

21          Q.     Any other communications that you  
22    relied on in forming your opinions from  
23    counsel?

24          A.     Yes.

25          Q.     What communication?

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1 A. No.

2 Q. Did you personally prepare the  
3 expert report that you submitted in this  
4 matter?

5 A. I did.

6 Q. Did you have assistance from anyone  
7 else in preparing the report?

8 A. I did.

9 Q. And who was that?

10 A. On the last day of the deadline for  
11 the report my wife assisted me with some  
12 typing but did none of the analysis and  
13 contributed no words to it.

14 Q. When you say she assisted you with  
15 the typing, was she typing up notes that you  
16 had?

17 A. Yes.

18 Q. Do you still have those notes?

19 A. Yes.

20 Q. Did anyone else assist you in  
21 preparing the report?

22 A. No.

23 Q. What expertise are you claiming to  
24 provide in this matter?

25 A. The expertise based on knowledge,

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1 experience and training in human resources  
2 matters and particularly performance  
3 reviews -- performance review processes,  
4 selection and promotion processes.

5 Q. Anything else?

6 A. Nothing I can think of right now.

7 Q. In your report on page 6 you refer  
8 to yourself as a statistician.

9 A. Yes.

10 Q. What does that mean?

11 A. It means I have been trained and --  
12 I have been trained in some basic and some  
13 more advanced statistics and know how they  
14 apply in the very narrow area of equal  
15 opportunity and employment.

16 Q. Are you a statistical expert?

17 MR. MURPHY: Objection.

18 You can answer.

19 A. I am not being proffered as a -- I  
20 am not putting myself forward as a  
21 statistical expert in this case and offer no  
22 statistical analyses.

23 BY MS. PHILION:

24 Q. If you could flip to page 1 of your  
25 expert report, please. And I am focused on

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1 bottom page of that document, and it might  
2 be, typically, 100 to 120 pages long. I  
3 would go to the last page and look for an  
4 unusual phrase or the Bates number. I would  
5 go to the top of the document and search for  
6 that thing, and if it went all the way to the  
7 end and found that thing, only thing would I  
8 assume it was word searchable. Then I would  
9 put the UER on the left of my screen and the  
10 yes, the year-end review, created at Major  
11 League headquarters, on the right side of my  
12 screen. And I would start at the first  
13 performance comments in the year-end review  
14 and search the section heading, the  
15 performance component heading for every UER  
16 on the left side of the screen.

17 Q. How did you determine if a comment  
18 in a performance evaluation was positive,  
19 negative or neutral?

20 A. I didn't. I didn't determine  
21 whether anything was neutral. I determined  
22 they were positive using the phrases that I  
23 have described. I decided they were neutral  
24 if it said something that I think the  
25 employee — that I took and I think any

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1 employee would take to be neutral. "You had  
2 a bad game; you were lazy; you give a bad  
3 impression; your performance in this area is  
4 deteriorating." It was -- it was not  
5 particularly difficult to find the negatives  
6 in the negative comments.

7 Q. So your evaluation was based on  
8 what in your view was a positive or negative  
9 word --

10 MR. MURPHY: Objection.

11 BY MS. PHILION:

12 Q. -- or phrase?

13 MR. MURPHY: Objection.

14 You can answer.

15 A. Yes.

16 BY MS. PHILION:

17 Q. Was this based on any set of formal  
18 criteria other than what you have just  
19 described?

20 A. No.

21 Q. Have you documented the criteria  
22 you used to assess positive and negative  
23 comments anywhere?

24 A. Yes.

25 Q. Is that in the memo that you

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1 at, it is possible.

2 Q. What, in your education and  
3 experience, informs your conclusion about  
4 whether a comment is positive or negative?

5 A. I just think that a long time in  
6 academic training and 40 years as a human  
7 resources manager and instructor, I have seen  
8 thousands of performance reviews before this  
9 case, and it is a specialized skill to do  
10 this volume of analysis, but it is not, I  
11 think, terribly difficult to look at a phrase  
12 and say, "That sounds negative." So my  
13 background is, I have done a lot of this  
14 before in scattered assignments; not in the  
15 intensity I was given here.

16 Q. What is "word salad"?

17 A. It's a phrase that, I think, comes  
18 from psychology and politics. It means a  
19 series of phrases that have a surface  
20 appearance of being about something or  
21 addressing some topic and yet, are much  
22 closer to random platitudes, which are  
23 unrevealing.

24 Q. How did you determine here where a  
25 phrase or sentence in a performance

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1 evaluation was what you concluded was word  
2 salad?

3 A. What performance evaluation?

4 Q. So in the year-end performance  
5 evaluations that you appended to your  
6 report --

7 A. (Nodding affirmatively).

8 Q. One of the categories you color  
9 coded was called "word salad," is that  
10 correct?

11 A. There is.

12 Q. Okay. So what I am trying to  
13 understand is how the criteria you set for  
14 determining that something in a year-end  
15 performance evaluation was "word salad"?

16 A. Actually, I found that to be the  
17 easiest of things to categorize. It's any  
18 phrase or sentence or paragraph that does not  
19 report the on-field -- the performance of  
20 that umpire during that season. It is  
21 unrelated to a performance review.

22 Q. How did you determine what was  
23 unrelated to a performance review with  
24 respect to Major League Baseball umpires?

25 A. Any sentence that did not say --

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1 MR. MURPHY: Objection. Asked and  
2 answered. You can answer again.

3 A. In order to complete the assignment  
4 that I had, to see whether the books were  
5 cooked or they were abused in writing their  
6 performance reviews, I didn't need to look at  
7 anyone else's to determine what happened to  
8 them.

9 BY MS. PHILION:

10 Q. How were you able to opine on the  
11 effects of the performance evaluation process  
12 on these three umpires if you didn't look at  
13 the performance evaluations of other umpires  
14 outside of their group?

15 MR. MURPHY: Objection. You can  
16 answer.

17 A. After weeks and weeks of looking at  
18 every single Umpire Evaluation Report  
19 submitted on these people, those umpires for  
20 six years, I came to the conclusion that  
21 their actual excellent performance was not  
22 being reported in the year-end review that  
23 baseball executives said was the basis of  
24 their selections.

25 Leaving out excellent performance



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1 from an employee's record is not positive for  
2 their career. It is not neutral for their  
3 career. It is negative for their career.  
4 Without comparison to anyone else.

5 MS. PHILION: Thank you,  
6 Dr. Baxter.

7 So I have no further questions, but  
8 before we go off the record, we are  
9 going to call for the production of the  
10 memorandum regarding your methodology  
11 that you said you created after you  
12 submitted your expert report.

13 We are also going to call for the  
14 production of any notes that you took in  
15 the process of the analysis in creation  
16 of your expert report.

17 We are not closing the deposition  
18 and will note that we have requested  
19 those documents from your counsel in  
20 formal document requests, and they were  
21 not provided to us.

22 MR. MURPHY: That is not correct.

23 Are you done?

24 MS. PHILION: Yes.

25 MR. MURPHY: Okay.

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1

2

EXAMINATION

3

BY MR. MURPHY:

4

5

Q. Doctor, as you know, I am Kevin

6

Murphy.

7

A. Yes, sir.

8

Q. And Jeffrey and I and Nick Gregg

9

represent Angel Hernández. You have been

10

asked a lot of questions about your search

11

terms and wild card terms in aid of your

12

review of the MLB records that you examined.

13

By the time you were done, did you

14

read every word of every UER for those six

15

years for these three umpires?

16

A. Yes, I did.

17

Q. You have been asked about your

18

occasional use in your report of terms such

19

as fair, unfair and ugly.

20

When you use those terms, did you

21

think that those terms were founded or

22

unfounded?

23

A. I thought that the terms were well

24

founded based on my years of experience and

25

seeing the kinds of unsupported comments that

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1 get performance review writers disciplined  
2 and fired.

3 Q. Did your opinion -- do the opinions  
4 -- let me start again.

5 Do the opinions that you will  
6 provide at the trial in this case depend upon  
7 any observation in your report that a  
8 statement was fair or unfair or ugly?

9 MS. PHILION: Objection.

10 A. If I removed -- if I remove the  
11 comments that I made, which I think are  
12 valid, that those eight or ten comments out  
13 of all the things I wrote, if I removed all  
14 of that, my findings -- my conclusions and  
15 all of my other comments would remain the  
16 same. The author really did leave out  
17 patterns of excellent performance for six  
18 years.

19 BY MR. MURPHY:

20 Q. Does your report intend or your  
21 trial testimony intend to provide any  
22 statistical analysis?

23 A. I offer no statistical analysis in  
24 my report and don't intend to in testimony.

25 Q. In light of the approach that you

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1       took, was there any need for you to use a  
2       formal coding protocol?

3           A.     No. I don't think so.

4           Q.     Are the opinions in your report and  
5       as expressed here today based upon applying  
6       your training, education and decades of  
7       experience in human resources?

8           A.     Yes.

9           Q.     And as part of that process, did  
10      you convert each year-end between 2011 and  
11      2016 to an MS Word document?

12          A.     I did.

13          Q.     Did you then convert the related  
14      UERs to a word-searchable Adobe Acrobat  
15      document?

16          A.     I did.

17          Q.     Did you use nuance power PDF  
18      standard to do that?

19          A.     I did.

20          Q.     Did you then place the two  
21      documents side by side on your computer  
22      screen?

23          A.     I did.

24          Q.     Did you examine then whether the  
25      UERs supported the phrases and words the

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1 author chose to write in the year-end?

2 MS. PHILION: Objection.

3 A. Yes. I did.

4 BY MR. MURPHY:

5 Q. If no UER commented on a particular  
6 performance component for the full year, did  
7 you report that?

8 A. Yes, I did.

9 Q. If the author offered a year-end  
10 comment despite the lack of a UER comment for  
11 that component, did you specify that it was  
12 unsupported by any UER?

13 A. I specified the author's comment  
14 was unsupported by UER.

15 Q. And if the author offered a  
16 year-end comment which specified a date or a  
17 date range, did you search for the UER for  
18 that date or date range and components?

19 A. Yes, I did.

20 Q. And did you then examine whether  
21 the UER supported the author's comments?

22 A. I first examined whether such a UER  
23 existed, and if it existed, then I searched  
24 for whether it said what the author later  
25 claims it said.

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1 Q. And if there was no UER in the  
2 record for that date, did you report that as  
3 well?

4 A. Yes, I did.

5 Q. If the UER included no comment for  
6 that component for that date, did you report  
7 that?

8 A. Yes, I did.

9 Q. If the UER included a component --  
10 I am sorry. Let me start again.

11 If the UER included a comment for  
12 that component for that date, did you check  
13 whether the words of the UER supported the  
14 words the author used in the year-end?

15 A. Yes, I did.

16 Q. And did you report that?

17 A. Yes.

18 Q. Did that require word for word  
19 correspondence between the UER and the YE  
20 comments?

21 A. I did not require word for word  
22 correspondence.

23 Q. For all the on-field components,  
24 did you search all UER for each component  
25 headings and then scroll down to see whether

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1       there were UER comments?

2           A.     I did for every one of them.

3           Q.     If there are comments like good,  
4       great, fine, nice, remarkable, excellent,  
5       solid, skillful, what category would you put  
6       those comments in?

7           A.     I would have noted those as  
8       positive comments about that component.

9           Q.     "Quick," "energetic," "with  
10       energy," "promptly," "timely," "good hustle,"  
11       "solid job," "worked hard."

12                   Are all those commented by you as  
13       positive?

14           A.     Those are words actually found in  
15       UERs that I added to my search list, and I  
16       take them as positive about that performance  
17       component.

18           Q.     Working square, working in the  
19       slot, clear mechanics, with conviction,  
20       emphatic, clear, crisp, were those, too,  
21       positive comments?

22           A.     Although they are a little closer  
23       to baseball jargon, I took them as positive  
24       comments. Some of those about crisp, clear  
25       and emphatic are usually reserved to the

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1 section on quality of calls.

2 MR. MURPHY: That's all I have.

3 Thank you.

4 MS. PHILION: I have a couple more  
5 questions, Dr. Baxter.

6 BY MS. PHILION:

7 Q. Did the testimony you just provided  
8 in response to Mr. Murphy's questions  
9 comprehensively describe the methodology you  
10 used in the completion of your expert report?

11 MR. MURPHY: Objection.

12 A. No.

13 BY MS. PHILION:

14 Q. What did it leave out?

15 MR. MURPHY: The four hours of  
16 testimony.

17 A. I don't know. I couldn't  
18 accurately tell you right now which parts of  
19 the process he didn't ask about over the last  
20 few minutes.

21 BY MS. PHILION:

22 Q. For the parts that he did ask you  
23 about and you just described, are there any  
24 steps that Mr. Murphy himself could not have  
25 performed?



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1           A.     I would be conjecturing.

2           Q.     Well, what parts of that process  
3     did you apply expertise to that an ordinary  
4     person wouldn't have of what you just  
5     testified about in response to Mr. Murphy's  
6     questions. Only about that?

7           MR. MURPHY: That was asked and  
8     answered.

9           MS. PHILION: Well, no. You just  
10    asked those questions, I am asking about  
11    this.

12          MR. MURPHY: It's the same question  
13    that you asked earlier.

14    BY MS. PHILION:

15          Q.     With respect to the questions that  
16    you just answered that Mr. Murphy asked you,  
17    what specific expertise, what steps required  
18    specific expertise that an ordinary person  
19    doesn't have?

20          A.     I am not sure that any single  
21    specific step requires special expertise like  
22    I have. I think that reviewing hundreds of  
23    UERs to detect a pattern of performance by  
24    the author and then looking at dozens -- I  
25    don't think anybody had over 95 UERs in a

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1 year. Looking at 95 UERs to determine what  
2 happened, with regard to the proper reporting  
3 of that umpire's performance, I don't think  
4 the average non-human resources manager could  
5 do that. Maybe people with degrees in  
6 industrial relations and human resources just  
7 have the skills to do it faster and better.  
8 You could probably train most people to do  
9 it. I don't know.

10 MS. PHILION: No further questions.

11 Thank you for your time today,  
12 Dr. Baxter.

13 THE VIDEOGRAPHER: This will  
14 conclude video number three and end  
15 today's recording of the deposition of  
16 Dr. Greg Baxter. We are off the record  
17 at 2:25 p.m., March 5, 2020.

18 (Proceedings concluded at 2:25 p.m.)  
19  
20  
21  
22  
23  
24  
25